

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: John A. Russo
City Manager

Date: September 6, 2011

Re: Introduce an Ordinance Authorizing the Execution of a Lease for Real Property between the City of Alameda, as Lessor, and Alameda Swimming Pool Association, as Lessee, for Swimming Pool Facilities in Lincoln and Franklin Parks

BACKGROUND

The Alameda Swimming Pool Association (ASPA), a non-profit 501(c)3 corporation, has been operating and maintaining the City-owned pools in Franklin and Lincoln Parks since the mid-1950's via a lease agreement with the City. The facilities were originally constructed through private donations, and no City funding has ever been used to design, construct or maintain the sites since that time. ASPA bears all the expense of routine maintenance, utilities, pool chemicals, staffing, and capital repairs. In addition, they also provide liability as well as workers' compensation insurance.

The organization provides a wide variety of aquatic programming as well as free swimming lessons for kindergarten-age residents to over 600 family members annually. All of these activities are provided by trained volunteers with no City assistance. The lease was originally entered into in 1959 and has been extended many times over the years, with the most recent extension occurring in 2001. The current agreement expired in May 2011. ASPA has been operating the facility on a month-to-month basis under the terms of the previous agreement since the expiration date of the lease.

DISCUSSION

Given the unsettled situation with the pools at the Alameda Unified School District (AUSD) earlier this year, staff postponed renewing this lease while the City and the District worked to ensure community access to the District's pools. In the light of the recent agreement between AUSD and the City guaranteeing the public's access to those facilities, it is appropriate to move forward with the lease extension. It should be noted that the City has no financial ability to operate and maintain these valuable community assets and also benefits from the efforts of the non-profit to keep them available to the public.

Staff met with representatives of ASPA, and they have expressed their interest in continuing to operate and maintain the sites at no cost to the City. They have also

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agreed to work with City staff to develop a formula for estimating water costs and to absorb that cost into their operation. Additional items of discussion included the recent changes in health and safety codes. They were also able to provide documentation that the sites meet all upgraded health and safety codes.

The City Manager's Office will be scheduling discussions with ASPA to improve community access to the facilities. These discussions will focus on maintaining affordable membership rates, improving customer service through an open and responsive organization, as well as broadening community access for all residents. Also included will be discussions designed to simplify and streamline the registration process along with a public information campaign to provide clarity on how the organization functions.

FINANCIAL IMPACT

There is no financial impact to the General Fund since all costs to operate these facilities are the responsibility of ASPA.

RECOMMENDATION

Introduce an ordinance authorizing the execution of a lease for real property between the City of Alameda as Lessor, and Alameda Swimming Pool Association as Lessee, for swimming pool facilities in Lincoln and Franklin Parks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale Lillard", is written over the typed name.

Dale Lillard, Director
Alameda Recreation, Parks & Golf Operations

Exhibit:

1. Lease Agreement

EXHIBIT 1

LEASE AGREEMENT

THIS INDENTURE AND AGREEMENT, made this _____ day of _____, _____, by and between the CITY OF ALAMEDA, a municipal corporation, hereinafter referred to as "Lessor" or "City", and ALAMEDA SWIMMING POOL ASSOCIATION, a non-profit corporation, duly organized and existing under and by virtue OF THE LAWS OF THE State of California, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, Lessor is a municipal corporation owning certain real properties described herein; and

WHEREAS, Lessee desires to maintain and operate certain swimming pools and for such purpose desires to lease from Lessor the real properties described below and to contract with Lessor concerning the maintenance and operation of said swimming pools;

NOW, THEREFORE, for and in consideration of the rents herein reserved, and of the covenants and agreements herein contained on the part of Lessee to be kept and performed, Lessor does by these presents demise and lease unto the said Lessee all of those certain real properties situated in the City of Alameda, County of Alameda, State of California, as described in the descriptions attached hereto, marked "Exhibit A" and "Exhibit B", which are incorporated herein by reference as if fully set out herein, to have and to hold the same unto the said Lessee for and during the period commencing on September 7, 2011 and ending on September 30, 2021, unless said term shall be sooner terminated as herein provided, for the rental amount of one dollar a year, payable annually upon the execution of this lease agreement and subject to the following terms, conditions and covenants:

1. The term of this lease is September 7, 2011 through September 30, 2021, unless terminated earlier as set forth below.
2. Lessee shall operate the swimming pools located on the leased properties for members of the Lessee and shall limit membership in the association only on the basis of majority (18 years and older) and residency in the City of Alameda, payment of fees and adherence to the rules and regulations of Lessee.
3. A refusal of membership by Lessee may be reviewed by the City and the decision of the City shall be final.
4. All improvements to the leased properties estimated to cost over \$5,000 to shall be approved by the City; and substantial reductions to swimming schedules and

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programs shall be submitted to the City for review and approval prior to implementation thereof.

5. Lessee covenants and agrees to maintain and operate said swimming pools and facilities in compliance with all the regulations of the City of Alameda and the State of California and Health Departments having jurisdiction thereof.

6. Lessee agrees that it is the intent of this agreement that Lessor shall bear no cost or expense related, directly or indirectly, to maintenance and operation of the demised premise or the swimming pools and facilities located thereon during the term of the lease; provided, however, that nothing in this agreement shall preclude Lessor and Lessee from entering into other and further agreements or modifications of this agreement relating to the maintenance, use and operation of said swimming pools and facilities.

7. Lessee covenants and agrees to conduct said swimming pools and facilities in a proper manner and to enforce, by reasonable rules and regulations, good conduct on the part of all persons patronizing said swimming pools.

8. Lessee shall undertake a training and educational swimming program for kindergarten age children and a training and recreational program for both adults and children, including programs for senior citizens and handicapped persons. Rules and regulations adopted by the Lessee, including rules governing the use of said swimming pools and facilities and any admission or other fees charged thereon shall be subject to the approval of the City of Alameda prior to implementation thereof.

9. Lifeguard Training. Lessee shall provide at least one lifeguard present at all times the pools are in use by the membership. Lifeguards must hold the equivalent of a Red Cross advance life saving certificate or YMCA senior lifesaving certificate, including the training and ability to administer first aid, including CPR, in compliance with Health & Safety Code sections 116038, 116045. This requirement may be satisfied by member volunteer lifeguards.

10. Water Use. Lessee shall reimburse Lessor for its usage of City water as determined by City as shown by water meter or by a monthly estimate of water use. Lessor shall bill Lessee for its water usage on a quarterly basis, and Lessee shall remit payment within 10 days of receipt.

11. Annual Meetings. Lessee agrees that its Board of Directors shall hold a minimum of one meeting each year with the presidents of Lincoln and Franklin Pools. The meetings shall be open to all members, with notice of the meeting schedule posted at the Lincoln and Franklin Pools a minimum of 21 days in advance of the meeting date.

12. Schedule Committee. Lessee agrees to create a Scheduling Committee, composed as follows: one member appointed by the Board of Directors, one Board member from each Franklin and Lincoln Pools, one class representative, one senior

swimmer, one Alagator representative, and one lap swimmer. The Schedule Committee shall meet to develop an annual schedule for use of the facilities. The schedule shall be completed not later than 30 days prior to the Spring Swim Session, and is subject to approval by the ASPA Board of Directors.

13. Posting of Financial Statement. Lessee agrees to post a copy of its annual income and expense report at both the Franklin and Lincoln Pools for membership review.

14. On or before the commencement of the term of this Lease, Lessee shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 14-I, 14-II, 14-III, and 14-IV. Such certificates, which do not limit Lessee's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer afforded coverage shall provide thirty (30) days advance notice to the City of Alameda by certified mail, Attention: City Clerk." In addition to the certificate of insurance, an endorsement shall be provided naming the additional insured as set forth in paragraph 9-IV, below. It is agreed that Lessee shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California.

I. Coverage:

Lessee shall maintain the following insurance coverage:

(a) Workers Compensation:

Statutory coverage as required by the State of California.

(b) Liability:

Comprehensive general liability coverage in the following minimum limits:

Bodily Injury: \$2,000,000
Each occurrence

\$2,000,000
aggregate – all other
(if applicable)

Property Damage: \$2,000,000 each occurrence
\$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

II. Subrogation Waiver:

Lessee agrees that in the event of loss due to any of the perils for which it

has agreed to provide comprehensive general liability insurance that Lessee shall look solely to its insurance for recovery. Lessee hereby grants to City, on behalf of any insurer providing comprehensive general liability insurance to either Lessee or City with respect to the services of Lessee herein, a waiver of any right to subrogation which any such insurer of said Lessee may acquire against city by virtue of the payment of any loss under such insurance.

III. Failure to Secure:

If Lessee at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Lessee's name or as an agent of the Lessee and shall be compensated by the Lessee for the costs of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid.

IV. Additional Insured:

The City of Alameda, its City Council, Boards and Commissions, officers, And employees shall be named as an additional insured under all insurance coverage's, except any professional liability insurance, required by this Agreement. The naming of additional insured would be entitled under this polity if not names as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

15. Lessee shall indemnify and hold harmless City, its City Council, Boards and Commissions, officers and employees and volunteers from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees and expert witness costs, regardless of the merit of outcome of any such claim or suit arising from or in any manner connected to this agreement.

Lessee shall indemnify and hold harmless City, its City Council, Boards and Commissions, officers and employees, and volunteers from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees and expert witness costs, accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies arising from or in any manner connected to the services or work conducted or performed pursuant to this Agreement.

16. Lessee hereby covenants and agrees not to assign this lease during any part of the term set out herein nor to sublease nor sublet the demised premise, or any portion hereof, or in any other manner part with the possession or occupation of the same for any period of time greater than one day, without the prior consent of the Lessor first had and obtained.

17. It is mutually agreed that all improvements and fixtures (excluding personal property) constructed, installed or placed upon the demised premise during the period of this lease agreement, or otherwise, are the sole property of Lessor, free and clear of all encumbrances. Lessee further covenants and agrees to maintain and keep the demised premise and the improvements and fixtures thereon in a good state of repair during the entire term of this lease agreement. Failure to so maintain and keep shall constitute and be a default by Lessee subject to the terms of paragraph 19 of this lease agreement.

18. Either party to this lease may terminate the lease on September 30th of any year by delivering written notice of the exercise of the option to so terminate to the other party on or before July 30th of the same year.

19. Lessee hereby covenants and agrees that if any default be made by Lessee in any of the terms, conditions or covenants set out herein during the term of this lease agreement, that it shall then be lawful for Lessor, at its option, to terminate this lease immediately and to reenter upon said premise and to remove all persons there from; provided, however, that such termination and reentry shall not occur unless Lessor shall transmit to Lessee a written notice setting out such defaults and Lessee thereafter fails to correct such default within the specified time period. Defaults involving a threat to health and safety shall be corrected immediately upon receipt of the notice. Defaults not involving threats to health and safety shall be corrected within thirty (30) days of the receipt of notice. A waiver, in fact or in law, by Lessor, of any of the terms, conditions and covenants of this lease shall not be deemed as a continuing waiver of said term, condition or covenant, nor a waiver of any other term, condition or covenant.

20. In the event that Lessee is unable to satisfactorily carry on swimming programs it may terminate this lease by delivering a written ninety (90) day notice of the option to so terminate to the Lessor.

21. Lessee covenants and agrees to execute in due form all documents necessary to fulfill the purposes, terms, conditions, covenants and agreements contained in this lease agreement.

22. Lessee shall submit annual financial reports and any other type of report the City Manager needs to fulfill his obligations under this agreement to the City Manager or designee in a form satisfactory to him.

23. All notice and correspondence relating to the terms of this lease agreement shall be mailed or personally delivered to:

City of Alameda
Recreation & Park Department
2226 Santa Clara Avenue
Alameda, CA 94501

And

Alameda Swimming Pool Association
c/o Carol Stolte Paden
1405 San Antonio Avenue
Alameda, CA 94501

Notices or correspondence to the above addresses shall be deemed delivered two (2) days after placed in the mail or immediately after personal delivery.

19. This lease agreement shall be deemed to be executed as of the _____ day of _____, 2011.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

LESSEE
Alameda Swimming Pool Association

CITY OF ALAMEDA
A Municipal Corporation

By Carol S. Paden
Title President ASPA

By
Title

RECOMMENDED FOR APPROVAL:

By _____
Title

APPROVED AS TO FORM:
City Attorney

Title

ATTEST:
[If Agreement to be signed by Mayor]

City Clerk

F R A N K L I N P A R K

"EXHIBIT A"

BEING a parcel of land situated in the City of Alameda,
County of Alameda, State of California, and further described
as follows:

COMMENCING at the intersection of the northerly
line of San Jose Avenue, 60 feet wide,
with the westerly line of Paru Street, 60
feet wide, as said Avenue and Street are
shown on "Map of Oak Park" filed October
28, 1876 at page 103, Map Book 1, Official
Records of Alameda County;

THENCE westerly, along said northerly line of San
Jose Avenue, 31.69 feet;

THENCE northerly, along a line parallel with said
westerly line of Paru Street, 8.11 feet to
the TRUE POINT OF BEGINNING;

THENCE westerly, along a line parallel with said
northerly line of San Jose Avenue, 96.12
feet;

THENCE northerly, along a line parallel with said
westerly line of Paru Street, 118.86 feet;

THENCE easterly, along a line parallel with said
northerly line of San Jose Avenue, 96.12
feet;

THENCE southerly, along a line parallel with said
westerly line of Paru Street, 118.86 feet
to the TRUE POINT OF BEGINNING.

L I N C O L N P A R K

"EXHIBIT B"

BEING a parcel of land in the City of Alameda, County of Alameda, State of California, said parcel being a portion of lot 34 according to the Whitcher Survey, as subdivided by J. E. Whitcher, in the survey of the reservation of Chipman and Aughinbaugh in the southern portion of the Encinal of San Antonio, made and platted in August 1852, said plat being filed in the Recorder's office of said County of Alameda, State of California, March 9th, 1863; said lot 34 being a portion of the land conveyed to the City of Alameda, California by Ivey L. Borden as sole surviving Executor of the estate of Robert R. Thompson, deceased, by deed recorded in the Records of the County Recorder of the County of Alameda, October 23, 1908 at page 9 in liber 1541 of deeds; said parcel is further described as follows:

BEGINNING at a point on the northeasterly line of the afore-said lot 34 distant thereon 285.5 feet southeasterly from the most northerly corner of said lot 34;

THENCE southeasterly along the northeasterly line of said lot 34 a distance of 124.5 feet;

THENCE southwesterly at right angles to said northeasterly line 124 feet;

THENCE at right angles northwesterly, parallel to said northeasterly line 110.5 feet;

THENCE at right angles northeasterly 50 feet;

THENCE at right angles northwesterly, parallel to said northeasterly line 14 feet;

THENCE at right angles northeasterly 74 feet to the POINT OF BEGINNING.

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

APPROVING AND AUTHORIZING EXECUTION OF LEASE OF REAL
PROPERTY BETWEEN CITY, AS LESSOR, AND ALAMEDA SWIMMING POOL
ASSOCIATION, AS LESSEE, FOR SWIMMING POOL FACILITIES
AT LINCOLN AND FRANKLIN PARKS
(REQUIRES FOUR AFFIRMATIVE VOTES)

Approved as to Form
City Attorney

WHEREAS, the City of Alameda and the Alameda Swimming Pool Association, a non-profit corporation, previously entered into a lease of certain City owned properties, being portions of Franklin Park and Lincoln Park; and

WHEREAS, the City of Alameda and the Alameda Swimming Pool Association now desire to enter into a new lease for the same properties; and

WHEREAS, the term of this Lease shall be for ten (10) years, expiring on September 30, 2021; and

WHEREAS, the proposed lease does not have a significant effect on the environment, and therefore, is exempt under Section 15301 (e) (1) of the CEQA (California Environmental Quality Act) Guidelines; and

WHEREAS, a form of lease containing the covenants, terms and conditions to be entered into is on file in the office of the City Clerk of the City of Alameda; and

WHEREAS, pursuant to City Charter Article XXII Sec. 12, the City Council may lease public park property; and

WHEREAS, pursuant to City Charter Article III Sec. 10, no real property of the City shall be leased for a period in excess of one year except on the affirmative vote of four members of the Council.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda, and upon the affirmative vote of four members of the City Council that:

Section 1. The City Council of the City of Alameda hereby approves and authorizes the City Manager to execute the Lease of Real Property between the City of Alameda, as Lessor, and Alameda Swimming Pool Association, as Lessee, for Swimming Pool Facilities at Lincoln and Franklin Parks.

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Section 2. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2011.

Lara Weisiger, City Clerk
City of Alameda